

21st Century Radio Ventures, Inc.
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March 25, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

95-181

Re: MM Docket No. ~~95-124~~, Reply Comments of 21st Century Radio Ventures, Inc. to
Comments of Rainbow Broadcasting, Inc. With Respect to the Petition for Rulemaking To
Amend FM Table of Allotments, Bagdad, Arizona and Chino Valey, Az

Dear Mr. Caton:

Please find enclosed an original and four copies of the above referenced Reply Comments.

Also enclosed is a copy marked stamp and return. Please date stamp it and return it in the
enclosed envelope.

Please contact the undersigned if you have any questions.

Very truly yours


James L. Primm

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)

Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations)
(Bagdad and Chino Valley, Arizona)

MM Docket No. ⁹⁵⁻¹⁸¹~~95-424~~
RM-8727

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Reply Comments of 21st Century Radio Ventures, Inc.

21st Century Radio Ventures, Inc. ("Petitioner") permittee of KAKP (FM), Bagdad, Arizona, hereby replies to the comments of Rainbow Broadcasting, Inc. ("RBI"), in the above referenced proceeding.

Petitioner seeks to substitute Channel 280C3 for Channel 280A at Bagdad, Arizona and reallocate Channel 280C3 from Bagdad to Chino Valley, Arizona, to provide Chino Valley its first local aural service. Petitioner seeks modification of its construction permit to specify operation on Channel 280C3 at Chino Valley pursuant to Section 1.420(i) of the Commission's rules.

A. Petitioner Meets All of the Requirements of the Commission Pursuant to Section 1.420(i) of the Commission's Rules.

Generally, Section 1.420(i) reallocations are permitted, provided that an allotment to the new community would serve the Commission's allotment priorities and policies better than the allotment in the old community, and if the change would not

have the effect of depriving a community of an existing service representing its sole local transmission outlet. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, 66 RR 2d 827 (1989) ("Report and Order"), recon. granted in part, 5 FCC Rcd 7094, 68 RR 2d 644 (1990) ("Memorandum Opinion and Order").

1. A Preferential Arrangement of Allotments Will Occur By A Grant of the Petition.

Chino Valley, Arizona will receive its first local aural service which is the Commission's third FM allotment priority and second in weight behind provision of a first aural service. See Assignment Policies, 90 FCC 2d 88, 92 (1982). In addition, the number of persons served by KAKP (FM) will be dramatically increased from 2,330 people to 60,992.

2. KAKP is Unbuilt and Is Not A Service Upon Which the Public Has Come to Rely and Therefore the Proposed Reallocation Does Not Constitute Removal of An Existing Service

KAKP is unbuilt and pursuant to the Commission's precedent, its removal to Chino Valley from Bagdad does not equate to removal of an existing service.

The Commission distinguishes between removal of an operating radio station and removal of an unbuilt facility because it recognizes that removal of an unbuilt station does not "represent the same concerns with loss of service that removal of an operating station would represent." Pawley's Island and Atlantic Beach, South Carolina, 8 FCC Rcd 8657 (1993). In the instant case, therefore, removal of KAKP will not deprive the community of an existing service because, as an unbuilt construction

permit, there will not be a removal of a service upon which the public has come to rely. In addition, as noted in Petitioner's Petition, Channel 276C3 was recently allocated to Bagdad. As a result, provided that a construction permit is granted, another FM service will be available at Bagdad.

RBI suggests that it disagrees with the Commission's well-established precedent and suggests that "to distinguish an unbuilt station from a constructed one makes no sense whatsoever." RBI Petition at 2 note 2. RBI fails to provide a logical discussion of why it believes such precedent is non-sensical. Most broadcasters understand, as recognized by the Commission's cases, that once a radio station goes on the air it provides needed daily information and becomes an integral part of daily life in a community. On the other hand, a station like KAKP, which has never gone on the air, does not deprive the community of any such services. Services which, in fact, may eventually be provided by Channel 276C3.

RBI would have the Commission believe that in order to permit a change in city of license some additional "public interest" benefit must be shown by Petitioner in addition to the fact that a preferential arrangement of allotments will occur by a proposed change in the table of allotment. No such requirement has ever been put forth by the Commission. See Memorandum Opinion and Order, 5 FCC Rcd 7094, 7094 (pointing out that the only two requirements are (i) a preferential arrangement of allotments and (ii) change must not have the effect of removing an existing service representing the sole local transmission outlet).

RBI points out factual distinctions between cases, such as the difficulties that some petitioners have finding a communications site, but fails to recognize that all of these cases were decided by the Commission on the basis of whether a preferential arrangement of allotments will occur and whether a community is being deprived of an existing service. See, e.g., Glencoe and Le Sueur, Minnesota, 7 FCC Rcd 7651 (1992) ("While the removal of Channel 241A at Le Sueur will remove Le Sueur's sole potential local service, we find that the change in community will not cause any disruption to existing service since Station KQXA has never been on the air").

In addition, RBI cites Pawley's Island and Atlantic Beach, South Carolina, 8 FCC Rcd 8657, in which the Commission permitted reallocation of a construction permit from Pawley's Island to Atlantic Beach despite the fact that only an unbuilt construction permit was left behind at Atlantic Beach. RBI suggests that this case is distinguishable from the instant case in so much as the removal of a construction permit from Pawley's Island to Atlantic Beach was premised on the fact that an issued, but unbuilt, construction permit was left behind at Pawley's Island. The Commission noted this fact, however, in the context of examining loss of service from an unbuilt construction permit and pointed out that "we do not consider removal [of a construction permit] from a community to represent the same concerns with loss of service that removal of an operating station would represent."

B. Allotment of Channel 263C3


RBI notes that Channel 263C3 may be allocated to Chino Valley. Should RBI wish this channel to be allocated to Chino Valley, it should properly petition the

Commission for a change to the table of allotments adding channel 263C3.

The Statements in these Reply Comments are true, complete and correct to the best of my knowledge and belief, and are made in good faith.

Respectfully Submitted,

21st Century Radio Ventures, Inc.


By 
James L. Primm
President and Counsel

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CERTIFICATE OF SERVICE

I, Faith Branch, do hereby certify that I have, on this 25th day of March, 1996, served a copy of the foregoing "Reply Comments of 21st Century Radio Ventures, Inc." on the following party by first class mail, postage pre-paid:

Rainbow Broadcasting, Inc.
c/o Thompson Hine & Flory P.L.L.
suite 800
1920 N Street, Washington, D.C. 20036


Faith Branch
Faith Branch